

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THURSTON COUNTY TO
ZITTEL'S MARINA, INC.

MR. AND MRS. HENRY EICKHOFF,
Appellants,

v.

THURSTON COUNTY and
ZITTEL'S MARINA, INC.,

Respondents.

SHB No. 104

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

A hearing on a request for review of an order granting a substantial development permit by the County of Thurston to Zittel's Marina, Inc. was held before the Shorelines Hearings Board in Lacey, Washington on August 1 and 2, 1974, before Board members Chris Smith, Arden A. Olson, designee of the State Commissioner of Public Lands, Gordon Y. Ericksen, representing the Association of Washington Cities, and Robert E. Beaty, representing the Washington State Association of

1 Counties, and Bernard G. Lonctot, sitting as hearing examiner.

2 Appellants, Mr. and Mrs. Henry Eickhoff, were represented by
3 Ernest L. Meyer. Respondent, Zittel's Marina, Inc. was represented
4 by Ray Hayes, and respondent, Thurston County, was represented by
5 Thomas J. Taylor, Jr., Assistant Prosecuting Attorney.

6 From testimony heard, exhibits examined, transcript reviewed
7 and assisted by the arguments of counsel, and exceptions filed, the
8 Board makes the following

9 FINDINGS OF FACT

10 I.

11 Any Conclusion of Law hereinafter recited which should be
12 deemed a Finding of Fact is hereby adopted as such.

13 II.

14 On October 26, 1972, Zittel's Marina, Inc. made application to
15 the County of Thurston for a substantial development permit to
16 construct and develop additional facilities and make other
17 improvements to their marina located on Johnson Point. Notice was
18 published in the legal newspaper; public hearings of the Thurston
19 County Planning Commission were held. A draft environmental impact
20 statement was prepared by Howard Godat, Engineer, and presented to
21 the Thurston County Planning Staff on July 26, 1973. The staff
22 examined the statement and made certain modifications. At the public
23 hearings, various residents and landowners, including the appellants,
24 Eickhoff, were heard, and thereafter the planning commission
25 recommended to the County Commissioners approval of the shorelines
26 permit for an additional 150 moorages and other improvements,

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1 including dockside facilities for the disposal of waste and the
2 deepening of the channel. On September 3, 1973, after two public
3 hearings, the Board of Thurston County Commissioners granted a
4 substantial development permit. Thereafter, within the statutory
5 period, appellants, Mr. and Mrs. Henry Eickhoff, the Department of
6 Ecology and the Attorney General filed a request for review of the
7 granting of said substantial development permit.

8 III.

9 The requests for review of the permit by the appellants,
10 Eickhoff, the Department of Ecology and the Attorney General, were
11 consolidated for hearing, said hearing being held before the
12 Shorelines Hearings Board on February 1, 1974.

IV.

14 The Board, by order dated March 13, 1974, remanded the
15 substantial development permit granted by Thurston County back to
16 said county to make the permit more definite and certain.

17 V.

18 Thereafter, the respondent, Thurston County, did on May 6,
19 1974, issue an amended substantial development permit to respondent,
20 Zittel's Marina, Inc. This permit eliminated the solid bulkhead
21 walk which was creating a material build-up problem, eliminated a
22 substantial landfill for additional parking facilities, and required
23 that all dredged material be removed to a deep water disposal site
24 under supervision of the Department of Ecology. The solid bulkhead
25 was to be replaced by floating walks which would permit the water
to flow freely. There would in addition be a 60-foot open space

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1 between the walkway and the shore. The number of new moorages
2 allowed was decreased from 150 to 100, which would then provide a
3 total wet storage capacity of 160 boats.

4 The Department of Ecology and the Attorney General, upon this
5 amended permit, did withdraw from the hearing and SHB No. 113 was
6 dismissed with prejudice.

7 VI.

8 The Board's proposed Findings of Fact and Conclusions of Law in this
9 matter were issued on February 21, 1975. Exceptions to these Findings by
10 the appellants concerning the admission of the Thurston County Master
11 Program were properly taken by the Board and the hearing was reconvened on
12 April 11, 1975, for the limited purpose of hearing evidence on the Thurston
13 County Shoreline Master Program, insofar as it could be ascertained on
14 date of this permit.

15 VII.

16 The Citizen's Advisory Committee for Shoreline Management for the
17 Thurston Region began actively working on the Shoreline Master Program for
18 Thurston County on July 1, 1973. The Committee held hearings throughout
19 the county in the fall of 1973. The proposed Master Program embodied in
20 Exhibit A-27 was received by the County Commissioners on May 8, 1974.
21 There was no evidence as to the Master Program's content or its treatment
22 of the area in question on September 3, 1973, the date of this permit.

23 VIII.

24 Zittel's Marina is located on Johnson Point. Johnson Point
25 and Anderson Island are two of the better salmon fishing areas in
26 southern Puget Sound. They are both near Zittel's Marina. The

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1 marina is also within ten water miles of five water-oriented state parks.

2 IX.

3 The Zittels purchased approximately 17 acres of land on
4 Johnson Point in 1957. At that time there was a rental, launching
5 and storage facility for 26 small boats located thereon. In 1965,
6 the Zittels built the present facilities, which consist of a boat
7 landing, boat launching and take-out ramp, boat removal equipment,
8 40 covered and 20 open moorages, and various storage houses.

9 X.

10 Appellants, Eickhoff, are the owners of approximately 80 acres
11 of land lying to the south of the marina. The land is unimproved.
12 The Eickhoffs have listed their property for sale.

13 XI.

14 The Eickhoffs believe that expansion of the marina will further
15 impair the aesthetic value of their property, restrict boat access
16 to, and resident use of, Baird Cove, and have an adverse effect on
17 the fish and shellfish in the area, especially the cove. Additionally,
18 neighboring property is adversely affected by accumulating debris.
19 They claim that the proposed new facilities, as planned, would
20 increase the negative environmental impacts.

21 XII.

22 Although the initial development of the marina in 1965 had
23 an adverse effect on the fish and shellfish in the immediate
24 area of the marina, the Department of Fisheries has determined
25 that there would be little additional adverse effect at this time
26 if expansion is permitted. The Department of Fisheries and the

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1 Thurston County Planning Department feel that close monitoring of
2 construction by the U.S. Army Corps of Engineers, through its permit
3 requirements, will greatly diminish the possibility of harm to the
4 shellfish and fish in the area.

5 XIII.

6 In order to alleviate the debris problem, Zittel's has agreed
7 to remove a 60-foot section of dock, lying near the north property
8 line, extending east from the shore, and to eliminate a portion of
9 the log boom. In order to lessen noise and wake problems, it will
10 encourage its users to proceed more slowly in the vicinity of the
11 marina.

12 XIV.

13 There is an undeniable need for additional marina facilities
14 and moorage in Thurston County. It is also undeniable that further
15 marina construction will have an adverse effect on the environment
16 in terms of noise, aesthetics, and impact on marine ecology. The
17 total adverse impact resulting from the expansion of the existing
18 facility is considered to be less than that which would be generated
19 by a new facility. Evidence presented at the hearing indicates that
20 regardless of the Zittel's development, there will continue to be
21 a substantial unmet demand for marina and moorage facilities in
22 Thurston County.

23 XV.

24 The substantial development permit was reissued May 6, 1974.

25 From these Findings the Shorelines Hearings Board comes to these

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1 CONCLUSIONS OF LAW

2 I.

3 Any Finding of Fact which should be deemed a Conclusion
4 of Law is hereby adopted as such.

5 II.

6 RCW 90.58.020 reads in part:

7 . . . that unrestricted construction on
8 the privately owned or publicly owned
9 shorelines of the state is not in the
10 best public interest; and therefore,
11 coordinated planning is necessary in
12 order to protect the public interest
associated with the shorelines of the
state while, at the same time, recognizing
and protecting private property rights
consistent with the public interest.

3 The same section goes on to say:

14 . . . This policy is designed to insure the
15 development of these shorelines in a manner
16 which, while allowing for limited reduction
17 of rights of the public in the navigable
waters, will promote and enhance the public
interest.

18 The section further goes on to say:

19 . . . Alterations of the natural condition of the
20 shorelines of the state, in those limited instances
21 when authorized, shall be given priority for single
22 family residences, ports, shoreline recreational
uses including but not limited to parks, marinas, piers,
and other improvements facilitating public access to
shorelines of the state,

23 The legislature has concluded, therefore, that public interest
24 is of paramount importance in establishing shoreline management
25 priorities. The Thurston County Planning Commission and
the Thurston County Commissioners represent the public interest

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1 in disposition of the instant permit. Such representatives of the
2 public interest have concluded that the proposed expansion of
3 Zittel's Marina is in the best interests of the people of Thurston
4 County in that additional marina facilities are undeniably needed
5 and that such expansion will have a lesser adverse affect on the overall
6 shorelines of Thurston County than the establishment of new and/or
7 other independent facilities. The instant permit, therefore, is
8 consistent with RCW 90.58.

9 III.

10 The dispositive guidelines in this case are those of the
11 Department of Ecology found in WAC 173-16-060(5) which concerns
12 itself, among other things, with the location of marina facilities.
13 Such provision concludes that high use location should be identified
14 and in (c) holds that "master programs should identify locations that
15 are near high use or potentially high use areas for proposed marina
16 sights. Local as well as regional 'need' data should be considered
17 as input in location selections. Similarly WAC 173-16-060(19)
18 must also be considered. That provision in (c) states that "priority
19 should be given to the use of community piers and docks . . . In
20 general, encouragement should be given to the cooperative use of
21 piers and docks."

22 Unquestionably, private concerns and private uses will differ
23 sometimes from the conclusions and policies of those who represent
24 the public interests. Such is the case here. In this matter,
25 representatives of the public interests acted in accordance with the
26 pertinent guidelines. The instant permit is consistent therewith.

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1 IV.

2 As of the date of this permit, September 3, 1973, Thurston County's
3 Shoreline Master Program was not sufficiently developed to permit this
4 Board to ascertain whether this permit was in conformity with that Program.
5 It is the policy of this Board to require that permits must conform to
6 Shoreline Master Programs insofar as they can be ascertained on the date a
7 permit is issued. We will not require permits to be consistent with
8 standards developed after the date of their issuance.

9 V.

10 The instant permit, having met the three tests of RCW 90.58 and
11 the guidelines and master program thereof, should be approved.

12 From these Conclusions, the Shorelines Hearings Board issues this

13 ORDER

14 The granting of a shorelines management permit for the expansion
15 of Zittel's Marina by the Thurston County Commissioners, on the
16 recommendation of the Thurston County Planning Commission, is hereby
17 affirmed.

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1 DONE at Lacey, Washington, this 28th day of April, 1.

2 SHORELINES HEARINGS BOARD

3 Arden A. Olson
4 ARDEN A. OLSON, Member

5 Robert E. Beaty
6 ROBERT E. BEATY, Member

7 Walt Woodward
8 WALT WOODWARD, Member

9
10 I dissent.

11 W. A. Gissberg
12 W. A. GISSBERG, Member

13 Chris Smith
14 CHRIS SMITH, Chairman

15 Gordon Y. Ericksen
16 GORDON Y. ERICKSEN, Member

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